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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,230	01/31/2001	Robert Santini	872-001	6145

7590

04/15/2002

Ward & Olivo
708 Third Ave.
New York, NY 10017

EXAMINER

CHEN, JOSE V

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 04/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/773,230

Applicant(s)

SANTINI, ROBERT

Examiner

José V. Chen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Note the use of the expression "invention".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, 12, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Simmons. The patent to Simmons teaches structure as claimed including surface (1), first and second leg assemblies (4), back (3), raised portion (8), base (6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-6, 15, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons. The patent teaches structure substantially as claimed as discussed above. The particular size and dimensions are matters of desirability and ergonomics which would have been obvious and well within the level of ordinary skill in the art since no unobvious advantage of the particular dimensions is unknown, thereby providing structure as claimed.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons as applied to the claims above, and further in view of Maxwell. The patent to Simmons teaches structure substantially as claimed as discussed above including raised portion (8) the only difference being that the portion is not rectangular. However, the patent to Maxwell (at 43) teaches the use of a rectangular raised portion. It would have been obvious and well within the level of one having ordinary skill in the art to modify the structure of Simmons to include a rectangular portion, as taught by Maxwell since such

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structures are alternative conventional structures used in the same intended purpose of providing a stop, thereby providing structure as claimed.

Claims 9, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons as applied to the claims above, and further in view of Patterson. The patent Simmons teaches structure substantially as claimed as discussed above the only difference being the materials used in the construction thereof. However, the patent to Patterson teaches the use of different types of plastics used in the formation of the structures of a supporting surface. It would have been obvious and well within the level of one having ordinary skill in the art to modify the structure of Simmons to include alternative conventional materials, as taught by Patterson, thereby providing structure as claimed.

Claims 10, 13, 14, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simmons as applied to the claims above, and further in view of Drake. The patent Simmons teaches structure substantially as claimed as discussed above the only difference being the materials used in the construction thereof and the use of hinges. However, the patent to Drake teaches the use of wood in the formation of the structures of a supporting surface and the use of hinges. It would have been obvious and well within the level of one having ordinary skill in the art to modify the structure of Simmons to include alternative conventional materials, and alternative folding means, as taught by Drake since such structures are used in the same intended purpose of providing characteristics of the materials used and an alternative folding means, thereby providing structure as claimed.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Baxter, Hall, Warren, Radtke, Frey, McFarlane teach structure similar to applicant's.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José V. Chen whose telephone number is (703) 308-3229. The examiner can normally be reached on m-f, m-th 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703)308-2168. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9326 for regular communications and (703)872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-2168.


José V. Chen
Primary Examiner
Art Unit 3637

Chen/jvc
April 8, 2002

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